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PATENT  
39003.814US01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:  
Gregory A. PICCIONELLI et al.

Group Art Unit: 3714

Examiner: B. Hadizonooz

Serial No. 10/822,213

Filed: April 9, 2004

For: STUDY AID WITH VIDEO  
MOTIVATION AND METHOD OF  
USE

APPEAL BRIEF UNDER 37 CFR 41.37

Mail Stop Appeal Briefs—Patent  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is an appeal from decision dated January 14, 2010, finally rejecting claims 44, 45, 50, 62, 64-66, 69 and 72-81.

REAL PARTIES IN INTEREST

The real parties in interest are the co-inventors Gregory A. Piccionelli and Michael M. Gerardi.

RELATED APPEALS AND INTERFERENCES

No prior or pending appeals, interferences or judicial proceedings are known to appellants which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

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TRANSMITTAL LETTER

Mail Stop Appeal Briefs—Patent  
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P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Enclosed please find the following: Appeal Brief; form PTO-2038 authorizing a charge of \$270.00; and return postcard.

Respectfully submitted,

7/14/2010

Date

  
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CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450, on July 14, 2010

  
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Michael M. Gerardi

Typed or printed name of person signing Certificate

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(951) 672-4354

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### STATUS OF CLAIMS

The status of all claims in this proceeding is as follows:

1-43. Canceled  
44-45. Rejected  
46-49. Canceled  
50. Rejected  
51-61. Canceled  
62. Rejected  
63. Canceled  
64-66. Rejected  
67-68. Canceled  
69. Rejected  
70-71. Canceled  
72-81. Rejected

The following claims are being appealed: claims 44, 45, 50, 62, 64-66, 69 and 72-81.

### STATUS OF AMENDMENTS

No amendments were filed subsequent to final rejection.

### SUMMARY OF CLAIMED SUBJECT MATTER

Independent claims 44, 45, 64, 65, 66 and 69 are summarized as follows.

Claim 44 defines a method of studying a subject (Fig. 2) that includes the steps of opening an educational application that includes questions on a subject (page 7, lines 26-27; Figs. 3-4); providing an answer to at least one question (page 9, line 1) and an instruction for a human model to remove an article of clothing when the answer is correct (page 2, lines 22-24; page 8, lines 19-21; Fig. 4); and viewing a human model removing the article of clothing when the provided answer is determined to be correct (page 9, lines 8-10; Fig. 5). The answer and the instruction are provided to a central site via a network (page 7, lines 26-27). The central site determines whether the answer so provided is correct (page 9, lines 2-3). Via the network, the model is viewed removing the article of clothing (page 9, lines 9-10; Fig. 5)

Claim 45 defines another method of studying a subject (Fig. 6) that includes the steps of opening an educational application that includes questions on a subject (page 10, lines 19-21) and a link to a model site on a network that permits viewing a human model (page 8, lines 23-25); providing an answer to at least one question (page 9, line 1; Fig. 7) to a central site on a network (page 9, lines 2-3); receiving a notification from the central site when the answer so provided is correct (page 10, lines 22-24; Fig. 8), together with a request to select an article of clothing to be removed by a human model (page 10, lines 24-25; Fig. 8); selecting an article of clothing in response to the request (page 10, lines 25-26; Fig. 8); and viewing a human model removing the selected article of clothing (page 10, lines 27-28; Fig. 9). The link to the model site is activated when the application is opened (page 8, lines 25-26). The model is viewed doing so via the network (page 8, lines 25-26; Fig. 9).

Claim 64 defines another method of studying a subject (Fig. 10) that includes the steps of opening an educational application that includes questions on a subject (page 11, lines 3-5) and a link to a model site on a network that permits viewing a human model (page 11, line 2); providing an answer to at least one question included in the application (page 11, lines 4-5); instructing the human model via the network to remove an article of clothing when the answer so provided is correct (page 11, lines 7-8); and viewing the human model removing the article of clothing when the central site determines that the answer so provided is correct (page 11, lines 8-9).

Claim 65 defines a method of studying a subject (Fig. 12) that includes the steps of opening an educational application that includes questions on a subject (page 11, lines 26-27) and a video file including images of at least one human model removing at least one article of clothing (page 11, lines 23-24); providing an answer to at least one question (page 11, lines 24-25); selecting at least one article of clothing worn by a human model whose images are included in the video file (page 11, lines 28-29); and viewing at least a portion of the video file including images of the human model removing the selected article of clothing when the answer so provided is correct (page 11, line 30-page 12, lines 1-2).

Claim 66 defines a computer-readable medium encoded with a computer application (page 11, lines 11-17; page 12, lines 4-15; Fig. 11). Included in the encoded computer application are an educational application that includes questions pertaining to a subject (page 11, lines 11-12; page 12, lines 5-6); means for providing answers to the questions to a model site (page 11, lines 12-13; Fig. 4; page 12, lines 6-7); and means for instructing a human model to remove an article of clothing when a question in the educational application is answered correctly (page 11, lines 15-17; Fig. 4; page 12, lines 7-8). The means for providing answers include a link to the model site, and a screen provided by the educational application (Fig. 4). The means for instructing a model include a link to the model site, and a screen provided by the educational application (Fig. 4).

Claim 69 defines another computer-readable medium encoded with a computer application (page 4, lines 16-17; page 12, lines 4-15; Fig. 10). Included in the encoded computer application are an educational application that includes a plurality of questions pertaining to a subject (page 12, lines 8-10) and a video file including images of at least one human model removing at least one article of clothing (page 12, line 10); means for receiving an answer to at least one question (page 12, lines 11-12); means for selecting at least one article of clothing worn by a human model whose images are included in the video file (page 12, line 12); and means for accessing and displaying at least a portion of the video file including images of the human model removing the selected article of clothing when the answer so provided is correct (page 12, lines 12-14). The means for receiving an answer include a screen provided by the educational application (Fig. 4). The means for selecting at least one article of clothing include a screen provided by the educational application (Fig. 4). The means for accessing and displaying include a screen provided by the educational application (Fig. 5).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 44-45, 50, 62, 64-66 and 72-81 were finally rejected under 35 U.S.C. §103(a) as obvious over Rachman et al. ("Rachman") in view of Jenkins et al. ("Jenkins") and the movie "Billy Madison."

ARGUMENT

THE COMBINED TEACHINGS OF RACHMAN, JENKINS AND "BILLY MADISON" DO NOT DISCLOSE OR SUGGEST METHODS OF STUDYING A SUBJECT OR COMPUTER-READABLE MEDIA AS PRESENTLY CLAIMED.

The Examiner has taken the position that the combination of Rachman's on-line course support method and system, Jenkins' cognitive ability training program including "reward animations", and the scenes from the movie "Billy Madison" in which the title character's teacher girlfriend (and also bus driver) removes articles of clothing while helping Billy study, would have rendered obvious the subject matter of the claims presented in this appeal. The Examiner, throughout the course of prosecution, has urged that the presently claimed invention resides in mere design choices with respect to "motivational and positive reinforcement". But contrary to the Examiner's contention, the subject matter of the present claims does not reside in mere motivation.

Rachman, as noted, discloses various on-line course support systems that provide access to course materials, homework assignments, tests and links to additional web sites providing additional information related to the course subject (see, e.g., paragraph 0007). Jenkins describes a computer-based training system the primary function of which is to help children and others with learning disabilities develop their cognitive abilities (see, e.g, col. 3, line 53 – col. 4, line 10). Animations, such as "Old MacDonald's Flying Farm", are provided in order to keep the user, typically a child or learning-disabled individual, focused on otherwise tedious and repetitive exercises that are carried out over a long period of time, typically weeks or more. "Billy Madison", in contrast, does not depict any type of computer-based study method. Rather, in the cited scenes, Billy receives personal assistance from his girlfriend (and assistance of a more dubious and clearly comedic nature from the bus driver) in studying various subjects, during the course of which the girlfriend and the bus driver remove various articles of clothing. None of the foregoing references, however, alone or in any combination, disclose, suggest or contemplate study methods including the specific combinations of steps that are defined in the claims now on appeal, or computer-readable media encoded with computer applications that include such steps.

1. The combined teachings of Rachman, Jenkins and "Billy Madison" do not disclose or suggest study methods including the step of instructing a human model to remove an article of clothing when a correct answer to a question is provided.

Neither Rachman nor Jenkins provide any teaching even remotely suggestive of using a human model as part of a method of study, still less instructing the model to remove an article of clothing when a correct answer to a question is provided by a user of such a method. "Billy Madison" fails to compensate for this deficiency. In the course of assisting Billy with his studies (in person, rather than over a computer network or in recorded form), both Billy's girlfriend and the bus driver appear *sua sponte* to begin removing their clothing. Billy does not suggest, let alone instruct, that either of them remove articles of clothing, and in particular does not instruct them to do so when he correctly answers a question. He simply observes their actions.

2. The combined teachings of Rachman, Jenkins and "Billy Madison" do not disclose or suggest study methods including the step of selecting an article of clothing to be removed by a human model when a correct answer to a question is provided.

By the same token, neither Rachman nor Jenkins provide any teaching pertinent to selecting an article of clothing to be removed by a human model when a correct answer to a question is provided by a user of such a method. "Billy Madison" again cannot provide the missing teaching. Since Billy not suggest, still less *instruct*, that his girlfriend or the bus driver remove any articles of clothing in the event that he provides a correct answer to a question, *a fortiori* he does not *select* a particular article of clothing to be removed. To the contrary, both Billy's girlfriend and the bus driver make their own selection of articles of clothing for removal. Again, Billy merely observes the removal as he continues with his studying.

3. The combined teachings of Rachman, Jenkins and "Billy Madison" do not disclose or suggest computer-readable media encoded with computer applications including educational applications and means as presently claimed.

None of the foregoing references disclose or suggest computer applications that include educational applications with questions pertaining to a subject, together with means for providing answers to such questions to a model site and means for instructing a human model to remove an article of clothing when a correct answer is provided. Nor do the references disclose or suggest computer applications that include educational applications with questions pertaining to a subject, together with a video file including images of models removing articles of clothing, and further coupled with means for receiving an answer to a question, means for selecting an article of clothing for removal by a human model, and means for accessing and displaying the part of the video file that includes the desired video images of the model removing the selecting article of clothing. Thus, the references cannot have suggested to one of ordinary skill computer-readable media encoded with such computer applications.

4. Argument of claims

Independent claim 44 recites a method of studying a subject including the steps of: opening an educational application that comprises a plurality of questions pertaining to a subject; providing to a central site via a network an answer to at least one said question, and an instruction directing a human model to remove an article of clothing when the central site determines that the answer so provided is correct; and viewing via the network a human model removing the article of clothing upon determination by the central site that the answer so provided is correct. Neither Rachman, Jenkins nor "Billy Madison" disclose or suggest providing an instruction directing a human model to remove an article of clothing when a correct answer to a question is provided. Nor do the cited references suggest providing such an instruction, or an answer to a question, to a central site via a network. Nor do the references suggest that the central site make the determination whether the answer provided is correct, or that a user view the model removing the article of clothing after such a determination is made. Claim 44 is thus patentably distinguished over the cited references.

Independent claim 45 defines a method of studying a subject including the steps of: opening an educational application that comprises a plurality of questions pertaining to a subject and a link to a model site on a network that permits viewing a human model, the link being activated when the educational application is opened; providing to a central site via a network an answer to at least one of the questions; receiving a notification from the central site when the answer so provided



is correct, together with a request for selection of an article of clothing to be removed by a human model; selecting an article of clothing in response to the request received; and viewing via the network a human model removing the selected article of clothing. Neither Rachman, Jenkins nor "Billy Madison" disclose or suggest selecting an article of clothing to be removed by a human model. Nor do the cited references suggest receiving a request for such a selection from any source, in particular from a central site on a network. None of the foregoing references disclose or suggest the use of an educational application that includes both a plurality of questions pertaining to a subject and a link to a model site on a network that permits viewing a human model, nor in particular activating such a link when the educational application is opened. The references also fail to suggest viewing, via a network, a human model removing the selected article of clothing at any time, in particular after a correct answer to a question has been provided. Claim 45, and all claims dependent thereon (claims 50, 62, and 72-81), thus are patentably distinguished over Rachman, Jenkins and "Billy Madison."

Claim 62, dependent on claim 45 (through claim 50) further specifies that the educational application determines when a correct answer is provided to at least one question included therein, that a notification from the educational application is received after a correct answer is provided together with a request for selection of an article of clothing to be removed by the human model, and that such an article is then selected. Nothing in Rachman, Jenkins or "Billy Madison," alone or combined, suggests such a combination of additional limitations. To the contrary, as explained above, "Billy Madison" suggests that a human (such as Billy's girlfriend), not a central site, determines when a correct answer is provided, and further, that this human then selects and removes an article of clothing, rather than receiving an instruction to do so. Claim 62 (and claim 77 dependent thereon) is distinguished over the foregoing prior art for these additional reasons.

Claim 72, dependent on claim 45 (through claim 50), further recites that the educational application provides the model site with an instruction for the model to remove the selected article of clothing. Similarly, claim 77, dependent on claim 45 (through claims 62 and 50), further recites that the educational application provides the model site with an instruction for the model to remove the selected article of clothing. No model site is taught by Rachman, Jenkins or "Billy Madison," and thus, no teaching for the educational application to provide a model site with an instruction of any kind, in particular an instruction for a model to remove a selected article of clothing, is present in any of the foregoing references. Claim 72 is thus additionally distinguished over Rachman, Jenkins and "Billy Madison", as likewise claim 77 is additionally distinguished over these references.

Claim 73, dependent on claim 45, further specifies that a site accessing the model site has a physical location, and that access to the model site is controlled based on the physical location of the accessing site. As noted above, no model site is taught by the foregoing references; thus, clearly, no control of access to such a model site based on the location of the accessing site is disclosed or suggested by the references. Claim 73 is further distinguished over Rachman, Jenkins and "Billy Madison" for this additional reason.

Claim 74, dependent on claim 45, further recites that a premium is provided after a pre-determined number of the plurality of questions in the educational application have been correctly answered. No such premium appears to be provided by Rachman or Jenkins (let alone "Billy Madison") after a pre-determined number of questions have been correctly answered. Claim 74 is further distinguished over the references for this reason.

Claim 75 (dependent on claim 45 through claim 74) further limits the subject matter of claim 74 by specifying that the premium comprises a discounted or free admission to an establishment. No such premium is even contemplated by any of the foregoing references. Claim 75 is further distinguished over Rachman, Jenkins and "Billy Madison" for this additional reason.

Claim 76 (also dependent on claim 45 through claim 74), further specifies that the premium comprises a discounted or free performance by a human model viewed in the method defined in claim 45, the performance to be viewed in person at an establishment or on a site via a network. No viewing of such a human model is disclosed or suggested by Rachman, Jenkins or "Billy Madison". Thus, the references fail to suggest providing a discounted or free performance by such a model, whether the performance is to be viewed in person at an establishment, on a site via a network or anywhere else. Claim 76 is therefore additionally distinguished over the foregoing references.

Claim 78, dependent on claim 45, further recites a plurality of sequential repetitions of the second through fifth steps of the base method. Since the cited references fail to disclose or suggest all of the steps of claim 45 (including receiving the notification from the central site together with a request for selection of an article of clothing to be removed, and selecting an article of clothing in response to the request), they clearly fail to suggest sequential repetitions of such steps. Claim 78 is therefore further distinguished from Rachman, Jenkins and "Billy Madison".

Claim 79, dependent on claim 45, further specifies that the model site requires a provision of value prior to accessing the site. Failing to teach accessing such a model site, Rachman, Jenkins and "Billy Madison" thus fail to suggest such a provision of value. Claim 79 is thus further distinguished from the foregoing references.

Claim 80, dependent on claim 45, further specifies that the model site permits viewing a human model selected from a plurality of human models, and that one of the plurality of human models is selected to remove the selected article of clothing. No model sites or human models, let alone a plurality of such human models, are taught by Rachman, Jenkins or "Billy Madison." Thus, claim 80 is additionally distinguished from the foregoing reference

Claim 81, also dependent on claim 45 (through claim 80), further limits the method defined in claim 80 by specifying that another of the plurality of human models is selected for viewing when a previously selected human model has removed a final article of clothing. No such choice of an additional model is disclosed, suggested or contemplated by Rachman, Jenkins or "Billy Madison." Claim 81 is thus distinguished from the references for this additional reason.

Independent claim 64 defines another method of studying a subject including the steps of: opening an educational application that comprises a plurality of questions pertaining to a subject and a link to a model site on a network permitting the user to view a human model; providing an answer to at least one question included in the educational application; instructing the human model via the network to remove an article of clothing when the answer so provided is correct; and viewing the human model removing the article of clothing upon determination by the central site that the answer so provided is correct. Neither Rachman, Jenkins nor "Billy Madison" disclose or suggest instructing a human model, via a network, to remove an article of clothing when a correct answer to a question is provided. Nor do the references suggest providing an educational application that includes both a plurality of questions on a subject and a link to a model site permitting the user to view a human model. Again, the references also fail to disclose or suggest that a user view the model removing the article of clothing after a central site determines that the correct answer has been provided. Claim 64 is thus patentably distinguished over the cited references.

Independent claim 65 defines another method of studying a subject including the steps of: opening an educational application that comprises a plurality of questions pertaining to a subject, and a video file including images of at least one human model removing at least one article of clothing; providing an answer to at least one question; selecting at least one article of clothing worn by a human model whose images are included in the video file; and viewing at least a portion of the

video file including images of the human model removing the selected article of clothing when the answer so provided is correct. Neither Rachman, Jenkins nor "Billy Madison" disclose or suggest selecting an article of clothing to be removed by a human model. Nor do the cited references suggest opening an educational application that includes both a plurality of questions on a subject and a video file including images of at least one human model, in particular a human model removing at least one article of clothing. The references also fail to suggest viewing video images of a human model, let alone of a human model removing the selected article of clothing, nor of viewing such a model after a correct answer to a question has been provided. Claim 65 is thus patentably distinguished over Rachman, Jenkins and "Billy Madison".

Independent claim 66 defines a computer-readable medium encoded with a computer application comprising an educational application that includes a plurality of questions pertaining to a subject, means for providing answers to the questions to a model site, and means for instructing a human model to remove an article of clothing when a question in the educational application is answered correctly. No computer-readable medium encoded with a computer application having the recited features is taught by Rachman or Jenkins, still less by "Billy Madison." In particular, no computer-readable medium encoded with a computer application that includes means for providing answers to questions to a model site, or means for instructing a human model to remove an article of clothing when the correct answer is provided, is disclosed or suggested by the foregoing references. Claim 66 is therefore patentably distinguished over the references.

Independent claim 69 defines another computer-readable medium encoded with a computer application comprising an educational application that comprises: a plurality of questions pertaining to a subject, and a video file including images of at least one human model removing at least one article of clothing; means for receiving an answer to at least one question; means for selecting at least one article of clothing worn by a human model whose images are included in the video file; and means for accessing and displaying at least a portion of the video file including images of the human model removing the selected article of clothing when the answer so provided is correct. Again, no computer-readable medium encoded with a computer application having the recited features is taught by Rachman, Jenkins or "Billy Madison." In particular, no computer-readable medium encoded with a computer application that includes a video file having the recited images, means for receiving answers to questions, means for selecting an article of clothing to be removed by a human model whose images are included in the video file, or means for accessing and displaying the selected images when the correct answer is provided, is disclosed or suggested by the foregoing references. Claim 69 is therefore patentably distinguished over the references.

It is believed that the foregoing comments very clearly demonstrate that combined teachings of Rachman, Jenkins and "Billy Madison" do not and cannot render obvious the presently claimed invention in the sense of 35 U.S.C. §103(a). Absent adequate teachings in the references, this rejection cannot stand and should be reversed.

#### CONCLUSION

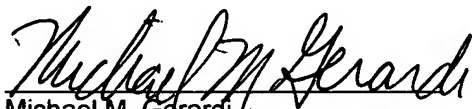
Neither Rachman, nor Jenkins, nor "Billy Madison," alone or in any combination, disclose or suggest methods of study, or computer-readable media, having all the limitations of the claims on appeal. In particular, none of the foregoing references teach or suggest instructing a human model to remove an article of clothing, or selecting an article of clothing for removal by a human model, and viewing the removal of the article of clothing when a correct answer to a question is provided. The references therefore could not have rendered obvious any of the claims now on appeal.

For the foregoing reasons, it is submitted that the final rejection is not in accordance with the Patent Statute and it is respectfully requested that it be reversed.

Respectfully submitted,

7/14/2010

Date

  
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CLAIMS APPENDIX

The following claims are involved in the appeal:

44. A method of studying a subject, the method comprising the steps of: a) opening an educational application that comprises a plurality of questions pertaining to a subject, b) providing to a central site via a network i) an answer to at least one said question, and ii) an instruction directing a human model to remove an article of clothing when the central site determines that the answer so provided is correct, and c) viewing via the network a human model removing the article of clothing upon determination by the central site that the answer provided in step b) is correct.

45. A method of studying a subject, the method comprising the steps of: a) opening an educational application that comprises a plurality of questions pertaining to a subject and a link to a model site on a network that permits viewing a human model, the link being activated when the educational application is opened, b) providing to a central site via a network an answer to at least one said question, c) receiving a notification from the central site when the answer provided in step b) is correct, together with a request for selection of an article of clothing to be removed by a human model, d) selecting an article of clothing in response to the request received in step c), and e) viewing via the network a human model removing the selected article of clothing.

50. The method of claim 45 wherein the educational application determines when a correct answer is provided to said at least one question included therein.

62. The method of claim 50 further comprising the steps of: receiving a notification from the educational application after step b) when the answer provided in step b) is correct and a request for selection of an article of clothing to be removed by a human model, and selecting an article of clothing to be removed by the human model.

64. A method of studying a subject, the method comprising the steps of: a) opening an educational application that comprises i) a plurality of questions pertaining to a subject, and ii) a link to a model site on a network permitting the user to view a human model, b) providing an answer to at least one question included in the educational application, c) instructing the human model via the network to remove an article of clothing when the answer provided in step b) is correct, and d) viewing the human model removing the article of clothing upon determination by the central site that the answer provided in step b) is correct.

65. A method of studying a subject, the method comprising the steps of: a) opening an educational application that comprises i) a plurality of questions pertaining to a subject, and ii) a video file including images of at least one human model removing at least one article of clothing, b) providing an answer to at least one question, c) selecting at least one article of clothing worn by a human model whose images are included in the video file, and d) viewing at least a portion of the video file including images of the human model removing the selected article of clothing when the answer provided in step b) is correct.

66. A computer-readable medium encoded with a computer application comprising a) an educational application that includes a plurality of questions pertaining to a subject, b) means for providing answers to the questions to a model site, and c) means for instructing a human model to remove an article of clothing when a question in the educational application is answered correctly.

69. A computer-readable medium encoded with a computer application comprising a) an educational application that comprises i) a plurality of questions pertaining to a subject, and ii) a video file including images of at least one human model removing at least one article of clothing, b) means for receiving an answer to at least one question, c) means for selecting at least one article of clothing worn by a human model whose images are included in the video file, and d) means for accessing and displaying at least a portion of the video file including images of the human model removing the selected article of clothing when the answer provided in b) is correct.

72. The method of claim 50 wherein the educational application provides the model site with an instruction for the human model to remove the selected article of clothing.

73. The method of claim 45 wherein a site accessing the model site has a physical location and wherein access to the model site is controlled based on the physical location of the accessing site.

74. The method of claim 45 wherein a premium is provided after a pre-determined number of the plurality of questions in the educational application have been correctly answered.

75. The method of claim 74 wherein the premium comprises a discounted or free admission to an establishment.

76. The method of claim 74 wherein the premium comprises a discounted or free performance by a human model viewed in step e), the performance to be viewed in person at an establishment or on a site via a network.

77. The method of claim 62 wherein the educational application provides the model site with an instruction for the human model to remove the selected article of clothing.
78. The method of claim 45 comprising a plurality of sequential repetitions of steps b)-e).
79. The method of claim 45 wherein the model site requires a provision of value prior to accessing the site.
80. The method of claim 45 wherein the model site permits viewing a human model selected from a plurality of human models, and wherein in step c) one of the plurality of human models is selected to remove the selected article of clothing.
81. The method of claim 80 wherein another of the plurality of human models is selected for viewing in step c) when a previously selected human model has removed a final article of clothing.